

**REMARKS/ARGUMENTS**

**Amendments**

No claims have been modified in the amendment.

**Reconsideration of Traversed Election/Restriction**

Claims 14-20 and 23 have been withdrawn from consideration by the Examiner as being directed to a invention that was constructively not elected. Applicant respectfully traverses this rejection and requests reconsideration in another office action, but provisionally elects claims 1-13 and 21-22. It is not believed that the amendment changes the claims in a way that would overburden the office beyond what was originally filed. Indeed, Garfinkle already uses a media to transmit information as would all distribution methods. Specifying the transport media is not believed to warrant constructive election in a restriction. Reconsideration of the restriction is respectfully requested.

**35 U.S.C. §103 Rejection, Garfinkle**

The Office Action has rejected claims 1-13, 21 and 22 under 35 U.S.C. §103(a) as being unpatentable by the cited portions of U.S. Patent No. 5,530,754 to Garfinkle (hereinafter "Garfinkle") by reliance on Official Notice. Applicants reiterate their believe that the previously amended claims are not taught or suggested by Garfinkle and that reliance upon Official Notice goes too far. More specifically, Garfinkle fails to teach or suggest that: (1) "the first portion is at least one eighth of the program" as required by claim 1; or (2) "the first segment is at least fifteen minutes in playback length" as required by claim 9. Further, reliance upon Official Notice that buffering of storage intensive video programs beyond the couple minutes in Garfinkle simply goes too far. Reconsideration is respectfully requested.

**Missing Limitations**

The limitation added to claim 1 requires 1/8 of the program be pre-stored and claim 9 has a limitation of 15 minutes. Garfinkle contemplates that "a lead-in segment may be on the order of two minutes long." Garfinkle, col. 4, lines 19-22. Video on demand programs

certainly more than 30 minutes in length such that Garfinkle doesn't contemplate anything like that claimed. This conjured scenario results in a 1/15 ratio. For a hour and a half movie, this ratio would be 1/45. In one embodiment of the invention shown in figure 9A, a two minute pre-stored first portion would require a two-hour NVOD program be simultaneously played on sixty different channels which is impractical on any video delivery system popular at the time this application was filed.

Having 1/8 of a program or 15 minutes pre-stored has advantages over Garfinkle's teachings and is not a logical extension to a Garfinkle-type system. Applicants reasonably believe that at the time this application was filed, the capacity of a commercially practical mass storage device would not be big enough to store a lead-in for 15 or 60 minutes for a line-up of VOD programs in any practical way. The VOD programs could number in the tens or hundreds such that buffering in this way would not be an design easily undertook and not a logical extension.

The first paragraph of the Final Office Action on page 6 suggests that Garfinkle could be improved by buffering 60 minutes of a program to have "more time to resolve network failures". Applicants submit that this example is completely unrealistic. First, buffering a 90 minute program for 60 minutes seems to obviate any need for a buffer as most of the program is already delivered. Second, a network designed for 60 minute network failures should not fairly be called a "network" as the transmission would be intermittent in such a system. Interruptions of that order on any network are infinitesimally rare occurrences such that use of an huge storage media for a such an unlikely event would not occur to anyone of ordinary skill in the art.

***Express Showing of Proof for Official Notice***

It is noted that the Office relies the Official Notice in this rejection. Namely, "at the time the invention was made, access to larger memory units/cache was well known in the art." Final Office Action, page 5, last paragraph. Applicants respectfully disagree. Video buffers in terminal equipment that could buffer VOD programs for 60 minutes in a way compatible with Garfinkle are not believed to have been known. The Office is respectfully

requested to provide an express showing of proof for this proposition as set forth in MPEP 2144.03.

Claim 7 has similar problems with Official Notice. Specifically, laserdiscs or DVDs that could store video in a VOD system are not believed to have been widely known as is asserted. A showing of proof are requested for this claim also.

***Motive to Combine Garfinkle and Official Notice***

Applicant respectfully notes that no cite is given for the motive to combine Garfinkle and the Official Notice. The last paragraph on page 5 of the Final Office Action, gives some reasoning to combine the Official Notice with Garfinkle, specifically, that would enable "longer durations of the lead-in segments to be stored on the receiver," such as an hour or more. As mentioned above, buffering for an hour or more to deliver a program is not reasonable. The buffer would nearly be the size of complete delivery, which obviates the whole reason buffering is used. Respectfully, this unsupported motive doesn't make sense.

Further, it is unclear to the Applicant where the motivation to combine comes from because there is no cite in the final Office Action. The Office is respectfully requested to indicate if the source is Official Notice or if a reference should have been cited. Should Official Notice be the source, an express showing of proof is requested for this motivation.

***Reasonable Likelihood of Success in Combining Garfinkle and Official Notice***

The obviousness test requires a reasonable likelihood of success in making the suggested combination. As described above, the capacity of a mass storage devices to do buffering of VOD programs of an "hour or more" would likely not have been successful in a VOD environment. Delivering a gigabyte of storage would be required to buffer each hour of video and doing this for tens or hundreds of programs would have significant problems in being successfully implemented. VOD systems change over the titles necessary on a regular basis. What type of network could deliver tens and hundreds of gigabytes to tens of thousands of subscribers on a regular basis? This huge buffering and bandwidth delivery effort to accommodate a "network" that is down for 60 minutes at a time, is not something that could be

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done with a reasonable likelihood of success. In conclusion, Applicants submit that a VOD system requiring these resources would not have been practical to be built at the time to overcome a problem "network" that is down for such extended periods.

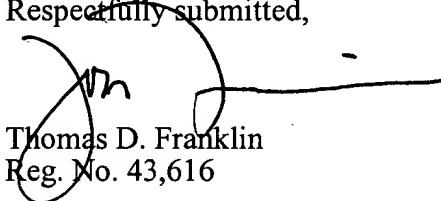
Reconsideration of the claims is respectfully requested.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

  
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